



**ZONING BOARD OF APPEALS**  
**RICHARD D. CARNEY MUNICIPAL OFFICE BUILDING**  
**100 MAPLE AVENUE**  
**SHREWSBURY, MASSACHUSETTS 01545-5398**

December 23, 2002

PRESENT: Ronald I Rosen, Chairman Pro-tem, Melvin P. Gordon, Joseph M. Armenti, Jr., Jon L. Revelli, Jonathan B Wright and Ronald S. Alarie, Building Inspector.

Mr. Rosen: This is a meeting of the Zoning Board of Appeals. The purpose of this meeting is not for the applicant, the Aulenbacks, or those opposing to admit new representation. Basically this meeting is further into the deliberations that we had after the hearing was closed on Tuesday night. We received a letter from Mr. & Mrs. Aulenback which I'll read into the minutes.

"We are writing this letter to recommend to the Zoning Board of Appeals that they reconsider their decision of denying a petition for an In-law Apartment filed with the Town of Shrewsbury and heard on Tuesday, December 17, 2002."

"We feel we did not receive a fair hearing and we are not satisfied with the reasons for the denial. None of the stated reasons for denial are valid. The only reasons given for denial were prejudicial statements and completely irrelevant comments. Two examples were: "Well, if she has a kitchen, then she'll be able to entertain." The other was "I don't have a problem with the in-law apartment, I have a problem with what's going on up there." We were publicly accused of "prostitution our land" and "twisting the law" as a means to subdivide our land. At one point during the meeting, it was inferred that we were not to be trusted in using the in-law apartment for its proper purposes. In fact, we have followed all of the guidelines set down by the Zoning Board of Appeals and we do in fact meet all of the criteria to allow us the right to have an in-law apartment in our house."

"The comments mentioned by an abutter, Mr. Bill Ballou, were totally irrelevant to our petition. The common driveway and car issues have absolutely nothing to do with the in-law apartment decision."

"We are also asking for a public apology for the way we were treated at this meeting. We have done absolutely nothing wrong to warrant this behavior from the Zoning Board of Appeals."

"Attached you will find a list of signatures of area neighbors between Holman Street and School Street who are strongly opposing this decision."

I have about a page and a half of signatures on the petition.

Mr. Ballou: Mr. Rosen, I have a letter to deliver to the board, as well.

Mr. Rosen: Well, I'll read this in. This is the only other thing I'm going to be taking. I'm not taking any comments or anything from anyone else in the audience in attendance tonight. This is just for our discussions tonight.

"Dear Board Members: It has come to our attention that Mr. & Mrs. Stephen Aulenback, residing at 150 Spring Street, have requested an emergency meeting of this Board for it to reconsider its decision to deny a special permit for construction of an in-law apartment unit in their new residence to be constructed to the rear of 150 Spring Street."

"At the public meeting held on the evening of December 17, 2002 the Board, acting within its power and authority, denied the request for this permit. The Board's vote was taken after considerable discussion by the Board, careful consideration of all the facts, and careful consideration of the concerns expressed during the public comments."

"As both interested parties and residents who reside within 500 feet of the Aulenback's property, we petition the Board to stand by its earlier decision and not reconsider the Aulenback's request. The facts considered by the Board have not changed nor has the opposition by the undersigned residents. It is our understanding that the petitioner may exercise their rights to appeal this decision and we further petition the Board that any reconsideration of this matter be handled through the defined appeal process."

"The Board should also consider the fact that the majority of the individuals whose signatures are contained on the Aulenbacks's petition for this special meeting are either relatives, unaffected parties and/or other parties living considerable distance from the Aulenback property and our properties. In granting such special permits, the concerns of those parties who would be most affected by such granting should be considered as primary."

"Thank you for your consideration of this matter."

And, whoever it's signed by. It's got a page of names.

After the meeting that we had Tuesday night I had a conversation with Ron where he didn't know what to write in the reasons for the denial because after the discussion, there was really no discussion, no one really voiced any opinions of why or why it was not passed or why or why not they did not vote on this particular issue. I just thought I wanted to reiterate those particular reasons. For my purposes, from my perspective, I voted in favor of it. My 4 ½ years as an alternate and a full member of the board I can only recall 1 prior incident in which an in-law apartment was denied. That was not as a special permit but because they had to build a new unit that was not attached to the existing house. There were zoning variance issues on that 1 particular matter. From my memory, every other one had passed. I saw this as a similar situation where there was not change to the outside of the building, there was really no change as to who was going to be living there, there was no change to anything else which was my vote in favor. I turn it over to you.

Mr. Armenti: The reason why I voted against it was that there was concern by a neighbor in opposition. I didn't see anyone else who came in favor of this and I saw being that trying to express his views as to where he was coming from. I've been on the board about as long as you. I felt the same way, but everyone that I've sat on where there was an in-law apartment, there hasn't been any opposition. This was one of the first ones there was. I took that into consideration.

Mr. Gordon: I was at Ronny's office early Wednesday morning because I thought we had faulted on our decision. The reasons I thought that we had faulted, selfishly, were relevant to things that I said and what they may have been taken by by another and made an influence on. On our board, the Planning Board, we always state that we advise that neither hearing or its records should be considered as a vote on the issue before the vote of the board. A vote by the board is only taken after the hearing has been closed. I also neglected to think. People have the right to use their property as they see fit within the constraints of the bylaw. Now, if the bylaw gives them the right, under a special permit, if it doesn't derogate from the bylaw, we don't really have a reason to deny. My use of words was poor. I checked the record 3 or 4 times. I listened to the tape 3 or 4 times and I did state that I misspoke. I saw this as a simple in-law issue. The applicant had the right to build the room without a special permit. He had a right to put a bathroom in that room. He had a right to put a stairway down into the garage in that room. He had the right to move his laundry room so that it could be in that room. In the change, he was only taking a playroom, adding a wall and adding a minor kitchen, which, if it were someone else, might have just built the room, waited until the building inspector came and went and put a stove in. I mean there are people who do do that. No one would come back unless somebody complained. In this neighborhood, somebody might complain. I mistakenly said what I said and for that I was wrong. That's among the reasons that I asked for the reconsideration and the reconsideration is written into the rules and regulations. I reread Section IX as to whether we can even deny a special permit. There are people that say we can; there are people who say we can't. In a special permit I think it's reasonable conditions of time and other things. Other people say it gives us the total discretion to turn it down. I'm not going to argue either one of those points. But, I didn't see this as a detriment, I didn't see, and I said it, that this is a 2-family house, I didn't see the extraneous issues of driveways or parties or other things as relevant. And, that's the reason. Those are the reasons that I voted for it. The only thing I did wrong was I misspoke about the bylaw. So, my vote was for.

Mr. Revelli: May I, Mr. Chairman?

Mr. Rosen: Sure.

Mr. Revelli: I did vote against it. I have 2 comments to make. One is procedurally how we're here tonight. I have a little bit of a problem with, and I know it's afforded by the zoning bylaws that we can be here by a motion for reconsideration. But, when you do this, you do circumvent the proper appeal process. My problem with tonight's meeting is not the substantive merits of the motion for reconsideration as so much as it is the precedent that the board may be setting in that other aggrieved petitioners may come

back at some particular point and feel that this is the next avenue of approach rather than the statutory appeal process.

I voted against it only because I saw opposition to it. I didn't see anyone come in and speak for it. I know there is some new evidence before the board at this time indicating that there are particular neighbors in favor of it. I don't think it's new evidence that we should take into consideration at this particular time because it wasn't in evidence before the board at the time of the hearing. I know we have aggrieved petitioners here. I think that all petitioners that walk out of here and they don't get a favorable decision do in fact become aggrieved. That's the nature of the process. My understanding is that it's our obligation to protect the integrity of the zoning as well as the rights of the abutters. I did, in fact, take into consideration certain things, but not anything that, I believe, was outside the scope of the issues before the board or that we that we should have taken into consideration. I didn't look to past petitions that were approved or past applications that were approved because the petitioner acted well within their rights when they did that. That's water under the bridge. I took into consideration factors that were presented before the board and opposition of abutters and other what I believe were facts that were detrimental to the petitioner's petition, not that there was going to be, in fact, an in-law apartment but maybe that this was, in fact, new construction, that we would lose some sight of the construction process itself, the amount of traffic that would affect the nearby residents, traffic going up and down Spring Street and the strong opposition from abutters in that particular neighborhood.

Mr. Wright: I voted for the special permit. It seems to be a pretty straightforward case and it meets the requirements of the special permit. It seems to become very personal in the neighborhood amongst the neighbors unfortunately. I think it's a fairly straightforward case and it meets the requirements for the special permit.

Mr. Rosen: Okay. While I'm at it, I'm sure Ron has the information he needs to write his opinion, but I'm going to make a motion...

Mr. Gordon: You're going to ask us to make a motion.

Mr. Rosen: That's right, I'm going to ask one of you to make a motion to reconsider the decision.

Mr. Gordon: I would move that we reconsider the decision realizing that the number of votes it takes. But, I would make a motion that we reconsider the petition.

Mr. Wright: I'll second the motion.

Mr. Rosen: Okay. Just so everyone knows Article IV of our zoning bylaws, actually the rules and regulations. Article IV, Section IV, Reconsideration, once a petition has been voted upon and the meeting adjourned, reconsideration of the decision shall be allowed only by affirmative consent of all board members. In no case shall reconsideration be allowed after 7 days of the board's vote or after the minutes and decisions have been signed. So, just for clarification, that was why it was called pretty hastily; because there was a 7 day window. The motion has been made and seconded. All in favor?

Mr. Gordon: Eye.

Mr. Wright: Eye.

Mr. Rosen: All opposed?

Mr. Rosen: Okay, the motion is defeated.

Mr. Gordon: Just before we go; I would like to make a motion that under the next rule under your rules and regulations that the chair be instructed to bring this to the Planning Board at the appropriate time so that it doesn't wait for the 2-year window if it doesn't go to court.

Mr. Wright: I'll second.

Mr. Rosen: All in favor?

It carries five nothing.

Also, just for Mr. Aulenback, just so that you know, an application may be withdrawn any time prior to the public hearing by notifying the clerk in writing of the desire to do so. An application may be withdrawn by consent of the majority of the board any time after the public hearing but prior to the final decision. So, if you were to withdraw and the board, it would just be a majority to withdraw. Then you could resubmit it at a later date without prejudice.

Mr. Aulenback: That withdrawal, does that have to go in front of the board again?

Mr. Rosen: Yes, it would.

Mr. Aulenback: At the next meeting or would it be before then?

Mr. Rosen: Ron, do we know?

Mr. Alarie: If the same members are assembled at our next scheduled hearing, yes.

Mr. Gordon: It would be whatever board is sitting that night, correct?

Mr. Rosen: Yes.

Mr. Gordon: It wouldn't be this board, necessarily?

Mr. Alarie: No, I think the same board members would have to sit and make a decision.

Mr. Rosen: It doesn't say that, really.

Mr. Alarie: But, I think in the context of the statute to participate in any matter you have to have sat at that hearing. You have to have that continuity.

Mr. Gordon: This would be a new hearing.

Mr. Alarie: Not as a matter of a request to withdraw. If at a subsequent date they are allowed to come back, at that point whoever is available to sit that night would sit and...

Mr. Gordon: But, if they withdrew, it would be the same board that let them withdraw by a majority?

Mr. Alarie: Correct.

Mr. Gordon: Okay. If they came back, when they came back...

Mr. Rosen: It would be whoever is sitting.

Mr. Gordon: It would be whoever is sitting that night.

Mr. Alarie: That's correct.

Mr. Gordon: Does that answer your question, Mr. Aulenback?

Mr. Aulenback: So, the bottom line is the next board meeting the same 5 board members would have to vote on it?

Mr. Gordon: No.

Mr. Rosen: No, no.

Mr. Gordon: Okay, if you request a withdrawal today, a majority of this board would have to vote to let you have that withdrawal without prejudice. Then if you came back, it would be the zoning board that sat that night that would be the one that heard it.

Mr. Aulenback: I see. And, I have until the decision is finalized in writing.

Mr. Rosen: If you wanted to take a piece of paper right now and write that you want to withdraw in writing, we can vote on it right now.

Mr. Gordon: No, he has 7 days.

Mr. Rosen: Does he, the 5 of us are here right now?

Mr. Alarie: I have 90 days in which to file the board's decision. Any time, 90 days from the date of the public hearing, if a request to withdraw is presented to the board before that action happens...

Mr. Gordon: So, that doesn't have to be within 7 days?

Mr. Alarie: No. The matter for reconsideration had to be within 7 days.

Mr. Gordon: Mr. Aulenback, Ronny is saying you have 90 days until he writes the decision.

Mr. Alarie: Well, no. I'm saying that I have 90 days in which to file.

Mr. Gordon: You have 90 days to write the decision.

Mr. Rosen: But, the 5 of us need to vote on the withdrawal?

Mr. Alarie: That's correct.

Mr. Rosen: Okay. We would need to get the 5 of us together again?

Mr. Alarie: Yes.

Mr. Aulenback: If we were to make that request, would that be voted on tonight, or could it be?

Mr. Rosen: Could it?

Mr. Gordon: Yes. It's on the record; it's a public meeting.

Mr. Revelli: Mr. Chairman, I have a question in terms of process here. First of all, have the results of the vote been recorded on the minutes?

Mr. Rosen: Which vote?

Mr. Revelli: This vote here, on denial.

Mr. Rosen: They have.

Mr. Revelli: They have?

Mr. Wright: What is the process?

Mr. Gordon: I'm not sure.

Mr. Rosen: Have they?

Mr. Alarie: We have a recording.

Mr. Rosen: We have a record of it.

Mr. Revelli: What is the process here about going before a Planning Board?

Mr. Rosen: I would defer to you.

Mr. Alarie: The law provides that if someone is denied an application they cannot reapply for the same matter for a period of 2 years. However, there is a provision in the law that says they can go before the Planning Board to seek their approval to come back to the Zoning Board of Appeals within that 2-year period. That's what Mr. Gordon was alluding to before.

Mr. Muntz: As long as we're taking questions, could I ask one?

Mr. Rosen: Sure, go ahead, one question.

Mr. Muntz: Thank you. I would have done this before in person, but I was in the hospital with my wife. My question is to the zoning officer. You have been doing this for how long?

Mr. Alarie: Thirty something years.

Mr. Muntz: I guess my question would be has there ever been an application solely for a special permit for an in-law apartment in the history of this town that has ever been denied?

Mr. Alarie: We only started issuing special permits for in-laws since the mid 80s or so. In my recollection, no. Not if it pertained solely to an in-law apartment.

Mr. Muntz: Thank you.

Mr. Rosen: Okay.

Mr. Gordon: The Section V, Reapplication, only upon consent of the Planning Board of the Town of Shrewsbury is regulated by Section 20, Chapter 49A of the General Laws of Massachusetts. A reapplication of an appeal acted unfavorably by the board be allowed within a period of 2 years following the date of filing of such unfavorable decision in the office of the Town Clerk. So, we could take it up after it was filed with the Town Clerk.

Mr. Aulenback: Okay.

Mr. Rosen: Do I have a motion to adjourn?

Mr. Gordon: I so move.

Mr. Aulenback: Is this for the record, Mr. Chairman? I would like to state that my wife and I are going to think about this maybe for a day or 2 before we decide what we want to do. Thank you very much though.



Mr. Rosen: Okay. Meeting is adjourned.



### Decision

On December 23, 2002 the Zoning Board of Appeals voted to deny the reconsideration of appeal of Stephen and Margaret Aulenback, 150 Spring Street, Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section VI, Table I, to allow the occupancy of a portion of the single family dwelling being constructed upon property located at 150 Spring Street as an in-law apartment.

### Vote

Mr. Rosen	Yes
Mr. Gordon	Yes
Mr. Armenti	No 
Mr. Revelli	No 
Mr. Wright	Yes